

memorandum



Mr. Verne Walton

Date : April 3, 1984

RECEIVED

From : 1

DIVISION OF LAND & MINING
SACRAMENTO

Subject: Your Opinion Request Dated March 7, 1984;
San Luis Obispo County Land Conservation Act Contract
Cancellation Application

You requested our opinion concerning a problem arising in San Luis Obispo County with respect to the proper method of calculating a land conservation act contract cancellation fee. ~~Assessor~~ has calculated a cancellation fee based upon the property's current full cash value while his Deputy County Counsel James B. Orton is of the opinion that the cancellation fee should be based upon the lower of current full cash value or factored base-year value.

Apparently the Assessor is acting in response to guidance given by ~~Bill~~ in his letter to the Assessor dated January 4, 1983. ~~Bill~~ advises the Assessor that the cancellation fee should be calculated based upon current full cash value because he interprets the contract to be more restrictive in that respect than is required by statutory law. After reviewing materials which were apparently not available to Bill, I have concluded that he has given the Assessor misleading advice.

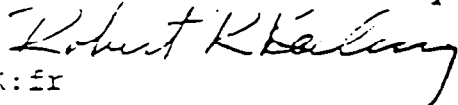
~~Bill~~ was correct in his basic premise that a contract may provide for restrictions, terms, and conditions, including payments of fees, more restrictive than or in addition to those required by statutory law. (See Government Code Section 51240.) It appears Bill was misled by the belief that the land conservation contract specifically called for a cancellation fee to be calculated based upon current full cash value. A review of the contract reveals that this was not the case.

The land conservation contract in question reveals that it was drafted using terms defined and in effect prior to Proposition 13 (California Constitution Article XIII A). It is apparent that the parties intended for the cancellation fees to be calculated in accord with the statutes by using full cash value as that term was defined at the time of the creation of the contract in 1975. The subsequent adoption of Proposition 13

April 3, 1984

changed the meaning of "full cash value" as that term is to be used for the calculation of cancellation fees for land conservation contracts. Assessors' Letter 82/10 is clarifying. That letter provides when determining a cancellation fee, the cancellation value is the taxable value as defined in Board Rule 460. The taxable value is the factored base year value of the property as if unrestricted or the current full cash value of the property as if unrestricted, whichever is less. The advice in this letter is still good.

I agree with the legal opinion of San Luis Obispo County Deputy County Counsel James B. Orton. ~~The taxpayer's~~ cancellation fee should be calculated based upon ~~Board Rule 460 and Assessors' Letter 82/10~~. We also agree that Bill McKay apparently gave his advice based upon a telephone conversation with the County Assessor in the absence and benefit of the full land conservation contract in question. I am reasonably certain that given the additional information, Bill would agree that the better view is as I express herein. In the absence of calling Bill McKay back from retirement, I suggest you inform the County Assessor of our views as expressed herein.


RRK:fr

cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Dick Schulte

BOARD OF EQUALIZATION

PROPERTY TAX RULES

Chapter 1. State Board of Equalization - Property Tax

Subchapter 4. Equalization by State Board

Article 3. Taxable Property of a County, City or Municipal Corporation

Rule 460. GENERAL APPLICATION

References: Section 110.1, Revenue and Taxation Code.
Article XIII A, Sections 1 and 2, California Constitution.

(a) Sections 1 and 2 of Article XIII A of the Constitution provide for a limitation on property taxes and a procedure for establishing the current taxable value of locally assessed real property by reference to a base year full cash value which is then modified annually to reflect increase in the inflation rate not to exceed two percent per year declines in value from whatever cause.

(b) The following definitions govern the construction of the terms in the rules pertaining to Sections 1 and 2 of Article XIII A.

(1) BASE YEAR. The assessment year 1975-76 serves as the original base year. Thereafter, any assessment year in which real property, or a portion thereof, is purchased, is newly constructed, or changes ownership shall become the base year used in determining the full value for such real property, or a portion thereof.

(2) FULL CASH VALUE.

(A) The full cash value of real property means:

1. The "full cash value" as defined in Section 110.1 of the Revenue and Taxation Code, as of the lien date 1975 for properties with a 1975-76 base year, or

2. The "full cash value" as defined in Section 110 of the Revenue and Taxation Code as of the date such real property is purchased, is newly constructed, or changes ownership after the 1975 lien date.

NOTE: The "full cash value" determined pursuant to Section 110 for property, or portions thereof, purchased, newly constructed or which changes ownership shall be enrolled on the next succeeding lien date unless the "full cash value" on that lien date is less, in which case the lien date value shall be enrolled.

(B) If real property has not been appraised to its appropriate base year full cash value, then the assessor shall reappraise such property to its full cash value for the appropriate base year lien date. Such reappraisals may be at any time, notwithstanding the provisions of Section 405.6 of the Revenue and Taxation Code but 1975-76 base year values must be determined prior to July 1, 1980, except in counties of 4,000,000 population the values must be determined prior to July 1, 1981.

(3) RESTRICTED VALUE. Restricted value means a value standard other than full cash value prescribed by the Constitution or by statute authorized by the Constitution.

(4) FULL VALUE. Full value (appraised value) means either the full cash value or the restricted value.

(5) INFLATION RATE. For each lien date after the lien date in which the base year full value is determined, the full value of real property shall be modified to reflect the percentage change in cost of living, as defined in Section 51 of the Revenue and Taxation Code; provided that such value shall not reflect an increase in excess of 2 percent of the taxable value of the preceding lien date.

Rule 460. GENERAL APPLICATION. (Continued)

(6) **TAXABLE VALUE.** Taxable value means the base year full value adjusted for any given lien date as required by law or the full cash value for the same lien date, whichever is less.

(7) **PROPERTY TAX RATE.** The property tax rate is the rate calculated in accordance with the ad valorem tax limitations prescribed by Section 1 of Article XIII A of the Constitution.

History: Adopted June 29, 1978, effective July 3, 1978.

Amended September 26, 1978, effective October 2, 1978.

Amended January 25, 1979, effective March 1, 1979. Applicable to assessments for 1979 and years thereafter.

Amended August 16, 1979, effective August 22, 1979. Amended (b) (2) (A) 1 and 2. and (B), (b) (6), repealed (b) (7) and renumbered (b) (8) as (b) (7).

Amended August 18, 1982, effective February 10, 1983.

Amended June 25, 1985, effective September 22, 1985. In Section (b) (5) Revenue Section changed from Section 2212 to Section 51.

Rule 460.1. 1975 BASE YEAR VALUES.

References: Section 110.1, Revenue and Taxation Code.

Article XIII A, Sections 1 and 2, California Constitution.

(a) For the 1978-79 fiscal year and years thereafter, the assessor shall determine base year value for property or portion thereof with a 1975 base year at the value appearing on the 1975-76 assessment roll when that value resulted from a "periodic appraisal" made for the 1975 lien date, whether or not the 1975-76 roll value differed from the 1974-75 assessment roll value.

(b) The value of a parcel of property shall be presumed to have been determined pursuant to a "periodic appraisal" for the 1975-76 fiscal year if the assessor's determination of the value for that year differed from the 1974-75 assessment roll value, but the assessor may rebut the presumption by evidence that notwithstanding such differences in value, the property was not "periodically appraised" for the 1975-76 fiscal year.

Value differences between the 1974-75 and 1975-76 assessment rolls resulting from such things as zoning changes, new construction, or interim adjustments not designed to equal 1975 general revaluation levels will not be considered as resulting from "periodic appraisals."

(c) For the 1978-79 fiscal year and years thereafter, any property or portion thereof whose 1975-76 value was determined as a result of an appeal filed in 1975 with a county board shall have that value as its 1975-76 base year value.

(d) The base year value of any property not appraised for the 1975 lien date or not determined as a result of an assessment appeal filed in 1975 shall be valued by the assessor using only those factors and indicia of fair market value actually utilized in "periodic appraisals" made for the 1975 lien date. Such values shall be consistent with the values established for comparable properties that were reappraised for the 1975 lien date.

(e) Determination of value made pursuant to (d) of this section shall be made at any time until June 30, 1980, except in counties over 4,000,000 population the values must be determined prior to July 1, 1981, and if made prior to June 30 of any year may be added to either the roll for the fiscal year in which the value determination is made or included with the assessments for the succeeding fiscal year.

No escape assessments may be made because of value increases to the 1975 base year that result from redetermination of values pursuant to this section, but decreases in such values shall be certified to the auditor by the assessor as corrections to the roll prepared for the 1978-79 fiscal year and fiscal years thereafter, as is appropriate.

History: Adopted May 23, 1979, effective May 25, 1979.

Amended July 27, 1982, effective February 17, 1983.



STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 1799, SACRAMENTO, CALIFORNIA 95808)
(916) 445-4982

GEORGE R. REILLY
First District, San Francisco

ERNEST J. DRONENBURG, JR.
Second District, San Diego

WILLIAM M. BENNETT
Third District, San Rafael

RICHARD NEVINS
Fourth District, Pasadena

KENNETH CORY
Controller, Sacramento

DOUGLAS D. BELL
Executive Secretary
No. 82/10

January 22, 1982

TO COUNTY ASSESSORS:

OPEN-SPACE STATUTES - CANCELLATION FEES AND CHARGES

Questions have been raised concerning the procedure to be used in determining the penalties and fees imposed when open-space contracts are cancelled. The purpose of this letter is to review the applicable code sections, redefine the basic terminology and demonstrate the correct methods of calculating the cancellation fee and the possible deferred tax charge.

One question concerns the effect of the change to a 100 percent assessment ratio upon the calculation of the fees and charges. Revenue and Taxation Code Section 135 was enacted in 1978 to allow comparison of assessed values and tax ratios for different years. Subsection (c) states:

"(c) Whenever this code requires comparison of assessed values, tax rates or property tax revenues for different years, the assessment ratios and tax rates shall be adjusted as necessary so that the comparisons are made on the same basis and the same amount of tax revenues would be produced or the same relative value of an exemption or subvention will be realized regardless of the method of expressing tax rates or the assessment ratio utilized."

Therefore all assessed values and tax rates used in the calculation of charges will be based upon a 100 percent assessment ratio.

Prior to the cancellation of an open-space contract the assessor is required to determine a cancellation value of the subject property for the purpose of determining a cancellation fee. In accordance with current law, this cancellation value is the taxable value as defined in Board Rule 460. This taxable value is the factored base year value of the property as if unrestricted or the current full cash value of the property as if unrestricted, whichever is less. The fee is 12 1/2 percent of the cancellation value. (Government Code Section 51283.)

In addition to the fee prescribed in Section 51283, Section 51283.1 requires the calculation of a deferred tax charge which, in some instances, may result in the collection of a supplemental fee. To determine the amount (if any) of this supplementary fee, the assessor

must establish four different values which, under current law, are defined as follows:

- (1) "The unrestricted assessed value,..." This value is the factored base year (Rule 460) full cash value as if unrestricted or the current full cash value as if unrestricted, whichever is less.
- (2) "The current restricted assessed value,..." This is the value determined in accordance with Section 423 of the Revenue and Taxation Code. (The lesser of the currently computed restricted value and the factored base year (Proposition 13) value as if unrestricted.)
- (3) "The base year unrestricted assessed value,..." In this context the term 'base year' is not the same as the base year defined in Board Rule 460. For contracts in existence for 10 years or less, this value is the assessed value for the year prior to the initiation of the enforceable restriction. For contracts in existence for more than 10 years, this value is calculated by interpolation as prescribed in Section 51283.1(a)(3)(B).
- (4) "The base year restricted assessed value,..." As in (3) above, the term 'base year' is not the same as the base year defined in Board Rule 460. For contracts in existence for 10 years or less, this value is the assessed value for the first year of the enforceable restriction. For contracts in existence for more than 10 years, this value is calculated by interpolation as prescribed in Section 51283.1(a)(4)(B).

Example of Cancellation Fee and Deferred Tax Charge Calculation When the Contract has been in Existence 10 Years or Less.

The assessor has determined the following rate and values for the subject property.

Current Tax Rate	.01125
Article XIII A Base Year Value (1975)	\$300,000
Factored Base Year Value (1981)	$\$300,000 \times 1.12616 = \$337,848$
Current Full Cash Value	\$500,000

Government Code Section 51283.1(a) values:

- (1) The unrestricted assessed value \$337,848
- (2) Current restricted assessed value \$200,000
- (3) The base year unrestricted assessed value \$150,000
- ((A) Assessed value for the first year prior to the initiation of the restriction (1972))
- (4) The base year restricted assessed value \$100,000
- ((A) Assessed value for the first year of the enforceable restriction (1973))

THE CANCELLATION FEE AS PER GOVERNMENT CODE SECTION 51283:

Cancellation Value of $\$337,848 \times 12 \frac{1}{2}\% = \$42,231$

COMPUTATION OF THE DEFERRED TAX CHARGE:

Subtract the current restricted assessed value⁽²⁾ from the unrestricted assessed value⁽¹⁾.

$$\$337,848 - \$200,000 = \$137,848$$

Subtract the base-year restricted assessed value⁽⁴⁾ from the base-year unrestricted assessed value⁽³⁾.

$$\$150,000 - \$100,000 = \$50,000$$

Average the figures determined above.

$$\$137,848 + \$50,000 = \$187,848 \div 2 = \$93,924 \text{ average assessed value}$$

Multiply the average assessed value by the current tax rate. This tax rate shall be equal to that used in determining the value of the land as prescribed in paragraph (3) of subdivision (b) of Section 423 of the Revenue and Taxation Code.

$$93,924 \times .01125 = \$1,056.65$$

Multiply this amount by a factor from the following table:

<u>Year</u>	<u>Factor</u>
1.....	1.06000
2.....	2.18360
3.....	3.37462
4.....	4.63709
5.....	5.97332
6.....	7.39384
7.....	8.89747
8.....	10.49132
9.....	12.18080
10.....	13.97164

$$\$1,056.65 \times 12.18080 = \$12,870.84$$

From this amount subtract the amount of the previously determined cancellation.

$$\$12,870.84 - \$42,231.00 = \$-29,360.16$$

In this instance there is no additional deferred tax charge because the answer is a negative number.

Variation in the calculations when the contract has been in force more than 10 years.

When the contract has been in force more than 10 years the "base year unrestricted assessed value" (3) and the "base year restricted assessed value" (4) are determined in a different manner. For example, assume the same facts as in the previous example except the property was enforceably restricted in 1967. The assessed value or the 1966 lien date was \$125,000 and the assessed value for the first year of the enforceable restriction (1967) was \$90,000.

To determine the "base year unrestricted assessed value (3):

Step (1) Determine the difference between the assessed value in the year prior to the initiation of the contract (\$125,000) and the current unrestricted assessed value (\$337,848).

$$\$337,848 - \$125,000 = \$212,848$$

Step (2) Determine the total time period between the year of application for cancellation and the year prior to origination of the contract and find what percentage 10 years is of the total term.

$$1981 - 1966 = 15 \text{ years}$$

$$10/15 = 67\%$$

Step (3) Apply this percentage to the difference arrived at in step (1).

$$\$212,848 \times 67\% = \$142,608$$

Step (4) Deduct the amount in step 3 from the current unrestricted assessed value.

$$\$337,848 - \$142,608 = \underline{\underline{\$195,240}}$$

\$195,240 is the "base year unrestricted assessed value" called for in (a)(3)(B) of the Government Code Section 51283.1.

To determine the "base year restricted assessed value" (4):

Step (1) Determine the difference between the assessed value in the first year of restriction (\$90,000) and the current restricted value (200,000).

$$\$200,000 - \$90,000 = \$110,000$$

Step (2) Determine the total time period between the year of application for cancellation and the first year the property was restricted and determine what percentage 10 years is of the total term.

$$1981 - 1967 = 14 \text{ years}$$

$$10/14 = 71\%$$

Step (3) Apply this percentage to difference arrived at in step (1).

$$\$110,000 \times .71 = \$78,100$$

Step (4) Deduct the amount in step 3 from the current restricted value.

$$\$200,000 - \$78,100 = \$121,900$$

Deduct this amount from the current unrestricted assessed value

$$\$337,848 - \$121,900 = \$215,948$$

\$215,948 is the "base year restricted value" called for in (a)(4)(B) of Government Code Section 51283.1

Once (3) and (4) are determined, the deferred tax charge is calculated in the manner demonstrated in the first example.

It has been our experience that the deferred tax charge is typically a negative figure and therefore the cancellation fee is the only appropriate charge for cancellation.

TO COUNTY ASSESSORS

-6-

I hope that this information is helpful to you. If you have any further questions, please contact Mr. Bill McKay at (916) 445-4982.

Sincerely,

A handwritten signature in cursive script that reads "Verne Walton".

Verne Walton, Chief
Assessment Standards Division

VW:ebv
AL-05-1193A